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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

IN THE MATTER OF THE COMPLAINT OF VATICAN SHRIMP COMPANY, INC. AS OWNER OF THE VESSEL VATICAN FOR EXONERATION FROM OR LIMITATION OF LIABILITY,
Petitioner

v.

GABRIEL SOLIS,
Respondent

IN RE: VATICAN SHRIMP COMPANY, INC.
Petitioner

On Writ Of Certiorari To The United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

CHARLES D. KENNEDY
147 E. Price Road, Suite A
P. O. Box 3509
Brownsville, Texas 78520
(512) 542-4377
Attorney for Petitioner,
Vatican Shrimp Company, Inc.

Of Counsel:
T. MARK BLAKEMORE
KEITH N. UHLES
ROYSTON, RAYZOR, VICKERY & WILLIAMS
147 E. Price Road, Suite A
P. O. Box 3509
Brownsville, Texas 78520
(512) 542-4377

Alpha Law Brief Co., Inc. — 8748 Westpark — Houston, Texas 77063 — 789-2000

QUESTIONS PRESENTED

1. Did the United States Court of Appeals for the Fifth Circuit err in abrogating the vessel owner's right to preserve limitation of liability by answer in state court, recognized in *Carlisle Packing Company v. Sandanger,* 259 U.S. 255, 42 S. Ct. 475, 66 L.Ed. 927 (1922)?

2. Did the United States Court of Appeals for the Fifth Circuit err in modifying the procedure for handling a contested issue of limitation of liability raised in a state court suit, established in *Langnes v. Green,* 282 U.S. 531, 51 S. Ct. 243, 75 L.Ed. 520 (1931) and *Ex Parte Green,* 286 U.S. 437, 52 S. Ct. 243, 76 L.Ed. 1212 (1932)?

LIST OF PARTIES

Pursuant to Rule 21.1(b), Rules of the Supreme Court, counsel for Petitioner certifies that the following is a complete list of all parties to the proceedings below and, additionally, all parties and persons believed to be interested in the outcome of this Petition:

1. Gabriel Solis, Respondent
2. Vatican Shrimp Company, Inc., Petitioner
3. Hon. Ricardo H. Hinojosa, United States District Judge
4. Barry Benton and Leon Crum, Attorneys for Respondent
5. Charles D. Kennedy, T. Mark Blakemore, Keith N. Uhles, Royston, Rayzor, Vickery & Williams, Attorneys for Petitioner
6. The St. Paul Insurance Companies, Underwriter for Petitioner

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, as well as the opinion on rehearing, is reported at 820 F.2d 674 and is printed in Appendix A to this Petition. Likewise, the orders and memoranda of the United States District Court are printed in Appendix A.

STATEMENT OF JURISDICTION

On July 23, 1987 the United States Court of Appeals for the Fifth Circuit issued an opinion denying Petitioner's Suggestion for Rehearing after rendering its initial opinion on March 17, 1987. Jurisdiction is afforded by 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The following statutory provisions involved are set forth at length in Appendix B.

28 U.S.C. § 1441 (1986)
28 U.S.C. § 1445(a) (1986)
28 U.S.C. § 1446 (1986)
28 U.S.C. § 1447 (1986)
46 U.S.C. § 183 (1986)
46 U.S.C. § 184 (1986)
46 U.S.C. § 185 (1986)

STATEMENT OF THE CASE

On October 12, 1984 Respondent, Gabriel Solis, filed suit in State District Court in Cameron County, Texas seeking an exorbitant amount of damages from Petitioner, Vatican Shrimp Company, Inc., owner of the shrimp trawler VATICAN, pursuant to the Jones Act, 46 U.S.C. § 688, and the General Maritime Law, resulting from an alleged injury of April 8, 1984 involving a contusion on his right wrist while serving as a crewmember on the

F/V VATICAN. (Sup.R. Vol. 1 p. 106) Petitioner, in its original answer, requested limitation of its liability and on April 15, 1986, Solis traversed Petitioner's right to limit liability by denying requested admissions of fact. (R. Vol. 1 p. 43) Consequently, on April 17, 1986 a petition asserting the right to limitation of liability as afforded by 46 U.S.C. § 183 was filed in the United States District Court for the Southern District of Texas. (R. Vol. 1 p. 69) The petition was dismissed by order and memorandum of May 6, 1986 as untimely. (R. Vol. 1 p. 306) On May 15, 1986, Petitioner subsequently filed a removal petition but the district court remanded the case on July 14, 1986. Petitioner filed notice of appeal of the order of dismissal and a petition for writ of mandamus regarding the remand of the removal action.

On March 17, 1987 the Fifth Circuit issued an opinion affirming the dismissal of the petition and refusing to grant the writ of mandamus. On June 23, 1987 the court issued an opinion denying rehearing and rehearing *en banc*.

ARGUMENT

THE FIFTH CIRCUIT'S HOLDING IS IN CONFLICT WITH PRIOR HOLDINGS OF THIS COURT

The questions at hand present a conflict between the holding of the Court of Appeals and prior holdings of this Court. The dilemma of balancing the exclusivity of the admiralty court's jurisdiction to decide a vessel owner's right to limitation of liability with the state court's jurisdiction over most suits from which a question of limitation of liability can arise, has often been the subject of discussion by this Court and lower courts.

The procedures for balancing these conflicts generally turns on the number of claimants, the adequacy of the limitation fund, and whether the vessel owner's right to limit is contested. The procedures for dealing with this conflict in light of the various criteria appears well settled where there are multiple claimants. *See Lake Tankers Corp. v. Henn,* 354 U.S. 147, 77 S. Ct. 1269, 1 L.Ed.2d 1246 (1957); *Pershing Auto Rentals, Inc. v. Gaffney,* 279 F.2d 546 (5th Cir. 1960). Likewise, the procedure for addressing the conflict where a single claimant is involved appeared settled long ago when this Court recognized the right of vessel owners to raise limitation of liability in a state court suit in *Carlisle Packing Co. v. Sandanger,* 259 U.S. 255, 42 S. Ct. 475, 66 L.Ed. 927 (1922), and established the procedure for handling the limitation issue in the subsequent cases of *Langnes v. Green,* 282 U.S. 531, 51 S. Ct. 243, 75 L.Ed. 520 (1931) and *Ex Parte Green,* 286 U.S. 437, 52 S. Ct. 602, 76 L.Ed. 1212 (1932). These procedures allow the action to proceed in state court until the right to limit liability is at issue; if the owner's entitlement to limitation of liability is traversed the action can be taken to a federal admiralty court for disposition. Nonetheless, the Fifth Circuit has discarded the vessel owner's right to raise and preserve limitation of liability by way of answer in a state court proceeding as afforded by 46 U.S.C. § 184, and has altered the procedure established by this Court permitting the preservation of such right.[1]

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1. The Fifth Circuit relied heavily on *Cincinnati Gas & Electric Co. v. Abel,* 533 F.2d 1001 (6th Cir. 1976), *cert. denied,* 429 U.S. 858 (1976), which has several material errors. First, the Sixth Circuit inaccurately interpreted the intent of Congress in passing the 1936 amendments and, consequently, utilized the wrong standard in interpreting the limitation statute. *Compare Id.* at 1005; *with Mary-*

THE FIFTH CIRCUIT ABROGATED THE RIGHT TO PRESERVE LIMITATION OF LIABILITY IN STATE COURT

The Court of Appeals held that the 1936 amendments to 46 U.S.C. § 185 modified the procedure established in the *Green* cases for handling a contested issue of limitation of liability arising in state court. The Fifth Circuit mandates that if a vessel owner is to exercise its right to raise limitation of liability it should file a 46 U.S.C. § 185 petition for limitation every time written notice of a claim is received, unless the written notice happens to be a suit filed in federal district court. This will lead to increased and unnecessary litigation, and multiplicity of litigation. The ultimate result will be to unduly burden the federal judiciary, increase the cost of litigation, increase the burden on vessel owners, narrow the availability of the vessel owner's right, and encourage forum shopping. The Fifth Circuit recognized that discarding the right to preserve limitation by answer in state court will have "serious consequences" for small vessel owners and would create added economic burdens

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land Casualty Company v. Cashing, 347 U.S. 409, 414, 74 S. Ct. 608, 611, 98 L.Ed. 806 (1954); *Odegard v. E. Quist, Inc.*, 199 F. Supp. 449, 451 (E.D.N.Y. 1961). Second, *Cincinnati Gas & Electric* is partially based upon an invalid distinction from the holding in *Murray v. New York Central Railroad Company*, 287 F.2d 152 (2d Cir. 1961), as to whether *Murray* was tried on the law or admiralty side of the docket. *Compare Cincinnati Gas & Electric*, at 1004; *with Romero v. International Terminal Operating Co.*, 358 U.S. 354, 380-381, 79 S. Ct. 468, 484-485, 3 L.Ed.2d 368 (1959). Finally, the Sixth Circuit incorrectly interprets the relationship between the "saving to suitors clause" and the limitation statute. *Compare Cincinnati Gas & Electric*, at 1004-1005; *with Ex Parte Green; Pershing Auto Rentals, Inc. v. Gaffney*, 279 F.2d 546, 551-552 (5th Cir. 1960).

on vessel owners. Nonetheless, the court concluded that "the only way we could provide a remedy to the petitioner would be either to bend the removal rules or to overrule United States Supreme Court precedent holding that a contested issue of limited liability is subject to the exclusive jurisdiction of the federal admiralty courts." We accept the holding that a contested issue of limited liability is subject to the exclusive jurisdiction of federal admiralty courts.[2] The remedy Petitioner seeks, however, can and must be provided by utilizing existing statutory means by allowing a petition to limit as an "appropriate proceeding" under 46 U.S.C. § 184 and/or by a reasonable application of the removal rules—without the bending of them as suggested by the court below. Both approaches preserve the right to raise limitation in answer in state court recognized in *Carlisle Packing Co. v. Sandanger,* and the basic procedure for addressing a contested limitation issue pending in state court promulgated in the *Green* cases.

THE RIGHT TO PLEAD LIMITATION IN ANSWER IN STATE COURT WAS ESTABLISHED BY STATUTE AND RECOGNIZED BY THIS COURT

The limitation statute was passed in 1851 with "an intent to encourage investment by exempting investors

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2. *See Langnes v. Green,* 282 U.S. 531, 541-542, 51 S. Ct. 243, 247, 75 L.Ed. 520 (1931); *The Lotta,* 150 F. 219, 222 (D.S.C. 1907). *Cooper v. Allison,* 243 Or. 179, 412 P.2d 356 (1966). Nonetheless, several state courts have addressed the issue. *See Fishboats, Inc. v. Welzbacher,* 413 So.2d 710 (Miss. 1982); *Morelli v. Ragan,* 358 N.Y.S.2d 40, 45 A.D.2d 1022 (App. Div. 1974); *Rank v. Colonial Sand & Stone Co., Inc.,* 331 N.Y.S.2d 290, 69 Misc. 2d 749 (Sup. Ct. 1972).

in ships from loss in excess of their investment."[3] The statute "sketched in outline, a scheme of laws and regulations for the benefit of the shipping interest."[4] "The regulations of detail as to the form and modes of proceeding was left to be prescribed by judicial authority."[5] To maximize the statute's value to maritime commerce the courts must "administer it in a spirit of fairness with the view of giving ship owners the full benefit of the immunities intended to be secured."[6]

In 1872 this Court recognized that "the act does not state what court shall be resorted to, or what proceeding shall be taken."[7] The Court began providing the forum and modes of proceeding by designating the district courts, as admiralty courts, as the appropriate forum and promulgating admiralty rules to aid and facilitate the proceedings.[8] In 1881 the contention that the admiralty

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3. *The Henrietta,* 279 U.S. 59, 49 S. Ct. 255, 73 L.Ed. 294 (1929). The current need to encourage the shipping industry is illustrated by the drop in oceangoing shipboard jobs from about 86,000 in 1951 to less than 11,000 in April 1987. U. S. Department of Transportation, Maritime Administration, *Merchant Marine Data Sheet* (Jan. 1951 - Apr. 1987).

4. *Providence & N.Y.S.S. Co. v. Hill Manufacturing Co.,* 109 U.S. 578, 3 S. Ct. 379, 386, 27 L.Ed. 1038 (1883).

5. *Id.* at 387. This is in accord with admiralty courts authority to grant equitable relief. *Vaughan v. Atkinson,* 369 U.S. 527, 530, 82 S. Ct. 997, 999, 8 L.Ed.2d 88 (1962). A court in admiralty should not be hampered in its efforts to reach substantial justice by inexorable rules. *The Minnetonka,* 146 F. 509, 515 (2d Cir. 1906). *See Cates v. United States,* 451 F.2d 411, 414 (5th Cir. 1971), *quoting, The David Pratt,* Fed. Case No. 3597 (D.C. Me. 1839).

6. *Providence & N.Y.S.S. Co.,* at 386.

7. *Norwich & N. Y. Transportation Co. v. Wright,* 80 U.S. 104, 123, 20 L.Ed. 585 (1872).

8. *Id.* at 124, 125.

rules contained the sole mode of proceeding was rejected.[9] This Court held that the rules were not intended to prevent ship owners from availing themselves of any other remedy or process which the law might entitle them to adopt, and explained that the statute contains one substantive provision, § 183, which establishes the owner's right to limit liability, and two procedural provisions, § 184 and § 185.[10] Section 185 provides that the owner may file a petition and transfer the vessel or otherwise provide security for the benefit of the claimants and that upon compliance any and all other proceedings against the owner shall cease. Section 185 is intended to assist the owner in bringing all creditors into concourse and if the owner does not see fit to utilize this procedure it is nonetheless deprived of the benefits of § 184.[11] Section 184 provides that the owner may take advantage of the substantive provisions by "appropriate proceedings", and raising limitation in answer in federal court was first recognized as such an appropriate proceeding.[12]

Subsequently, the right to obtain the benefits of the limitation of liability statute by answer in state court was recognized in *Carlisle Packing Company v. Sandanger.* The state courts, however, did not have jurisdiction to determine a contested issue regarding the owner's right to a limited liability, but, they were

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9. *The Scotland,* 105 U.S. 24, 33, 26 L.Ed. 1001 (1881).

10. *Id.* at 34.

11. *Id.* at 35; *The Great Western,* 118 U.S. 520, 6 S. Ct. 1172, 30 L.Ed. 156 (1886).

12. *The Scotland,* at 33. For unknown reasons many subsequent cases refer to the right to raise limitation in answer as arising under § 183, most likely referring to the substantive rather than procedural provision.

empowered to grant the vessel owner the relief sought.[13] Thus, a procedural query arose. The problem was answered and the proper procedure was promulgated in the *Green* cases. The claimant should be allowed to proceed in state court until the right of a vessel owner to limitation of liability is put at issue; once the owner's entitlement to limit liability to the value of the vessel and her freight then pending is challenged the state court proceeding must stop so the issue of the right to limit can be taken to a federal admiralty court for disposition.[14]

THE 1936 AMENDMENTS DID NOT ELIMINATE THE VESSEL OWNERS RIGHT

In 1936 various amendments were made to the limitation of liability statutes; for example, § 183 was changed to provide for *pro rata* sharing and § 185 was amended to provide for the posting of security in place of tendering the vessel.[15] Additionally, prior to 1936, it was deemed a sufficient compliance with § 185 to petition for limita-

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13. *See Langnes v. Green; The Lotta.*

14. *Benedict on Admiralty,* Vol. 3, § 73, pp. 8-13, 14 (7th Ed. 1987). In *Langnes v. Green,* 282 U.S. at 541, 542, 51 S. Ct. at 247, the Plaintiff had not put in issue the owner's right to limit liability and this Court held that the suit should proceed in state court unless "the right . . . to a limited liability might be brought in question in the state court . . ." When the case was returned to state court the Plaintiff contested the right to limit liability. *The Aloha,* 56 F.2d 647 (W.D. Wash. 1932). In *Ex Parte Green,* 286 U.S. at 439-440, 52 S. Ct. at 603, this Court held that since the state court lacks jurisdiction to determine the question of the owner's right to a limited liability, the Federal Court should exercise jurisdiction and dispose of the whole case "if the value of the vessel be not accepted as the limit of the owner's liability".

15. *Blunk v. Wilson Line of Washington, Inc.,* 341 F. Supp. 1345, 1348 (N.D. Ohio 1972).

tion at any time up to and including entry of judgment on claims against the owner. The 1936 amendment, however, changed § 185 to provide that the vessel owner was limited to a period of six months after written notice of claim to file its petition.

Since the 1936 amendments the courts have repeatedly upheld the right of an owner to raise limitation in answer in federal court without regard to the six month restriction.[16] The reasoning of these cases leads to the conclusion that the 1936 amendments did not eliminate a vessel owner's ability to effectively raise its § 183 right in state court. First, there is nothing in the 1936 amendments which indicates that Congress intended to take away the right of the vessel owner to raise limitation in an answer filed later than six months after receipt of notice of claim.[17] Second, in 1936 several portions of the limitation statute were amended and Congress chose to place a six month time restraint upon the filing of a § 185 petition but not on raising limitation in answer, thus indicating that limitation could be raised in an answer more than six months

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16. *Signal Oil & Gas Company v. Barge W-701,* 654 F.2d 1164, 1173 (5th Cir. 1981), *cert. denied,* 455 U.S. 944, 102 S. Ct. 1440, 71 L.Ed.2d 656 (1982); *Deep Sea Tankers v. The Long Branch,* 258 F.2d 757, 772 (2d Cir. 1958), *cert. denied,* 358 U.S. 933, 79 S. Ct. 316, 3 L.Ed.2d 511 (1959); *The Chickie,* 141 F.2d 80, 85 (3rd Cir. 1944); *Baham v. Atlantic Gulf & Pacific Company,* 333 F.Supp. 680, 681 (E.D. Pa. 1971); *Kutger v. United States,* 169 F.Supp. 104, 106 (N.D. Fla. 1958); *Moran Towing & Transportation Company v. United States,* 80 F.Supp. 623, 625 (S.D. N.Y. 1948); *Coryell v. Pilkington,* 39 F.Supp. 142, 145 (S.D. Fla. 1941).

17. *Kutger* at 106; *See generally,* Safety of Life and Property at Sea: Hearings on H. R. 9969 before Committee on Merchant Marine and Fisheries, 74th Cong. 2d Sess. (1936); S. Rep. No. 2061, 74th Cong. 2d Sess. (1936); 80 CONG. REC. 7455, 7565, 8437-8438, 8575 (1936).

after notice of claim.[18] Third, the purpose of the six month limitation was to require the vessel owner to act promptly.[19] This intent is not contravened by raising limitation of liability in answer because the plaintiff, by filing suit, controls the time within which the remedy must be invoked.[20] Finally, to hold that the owner cannot raise this right in answer in state court would, as will be discussed in more detail herein, and as was recognized by the Court of Appeals, increase the economic burden upon owners, in contrast to the intent of the statute.[21]

THE PROCEDURE ESTABLISHED IN THE *GREEN* CASES SHOULD BE MAINTAINED

No reason exists for altering the procedure set forth in the *Green* cases of allowing the owner to raise limitation by answer in state court and maintaining the action in state court until the right to limit liability is traversed. This is the procedure recommended by the most authoritative treatise, *Benedict On Admiralty, supra,* note 14. As discussed, Congress did not intend to alter this procedure or eliminate the vessel owner's right with the 1936 amendments. All Congress intended to do was to add a six month restriction to § 185 which, as the Fifth Circuit suggests, may have eliminated § 185 as the conduit for moving the action from state to federal court when the limitation right is traversed in state court. Petitioner, however, proposes two existing statutory provisions be utilized as

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18. *Deep Sea Tankers,* at 772.

19. *In re Morania No. 190, Inc.,* 690 F.2d 32, 33-34 (2d Cir. 1982).

20. *Odegard* at 451.

21. *Signal Oil & Gas Company,* at 1173, quoting *The Chickie* at 85.

the conduit for moving the action from state to federal court.

First, a petition filed as an "appropriate proceeding" pursuant to § 184 could be utilized to bring the action to a court of proper jurisdiction.[22] Failure to utilize § 185 does not deprive the owner of other "appropriate proceedings" under § 184.[23] Most modern cases state that there are two methods of raising limitation, but at least four methods have been recognized.[24] It must be remembered that the statute is a mere outline and that the modes of proceeding were left to be prescribed by judicial authority.[25] Thus, the procedure outlined in the *Green* cases should be left intact allowing the vessel owner to file a petition in federal court asserting the substantive right of § 183 in a proceeding under § 184 when the right to limit is traversed in state court. Such a proceeding would only be available in single claimant cases since in a multi-claimant case the owner must bring all creditors into concourse under § 185.[26] Furthermore, the doctrine

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22. The Fifth Circuit mistakenly classified the suit filed by Petitioner on April 17, 1986 as a petition under 46 U.S.C. § 185. The petition filed in the district court simply states:

> Petitioner further claims the benefit of Limitation of Liability as provided in Sections 4282 to 4289, inclusive, of the Revised Statutes of the United States (46 U.S.C.A., 182 to 189 inclusive) and any and all Acts of Congress of the United States amendatory thereof or supplementary thereto, and the rules of practice of this Honorable Court and the Supreme Court of the United States.

Petitioner contends this is an "appropriate proceeding" under § 184.

23. *The Scotland,* at 34.

24. *The Rosa,* 53 F. 132, 135 (S.D.N.Y. 1892).

25. *Providence & N.Y.S.S. Co.,* at 387.

26. *The Great Western,* 118 U.S. at 526, 65 S. Ct. at 1173.

of laches, which is currently utilized to determine the timeliness of a plea of limitation in answer, will prevent unfair prejudice to claimants.[27]

Second, the removal rules facilitate application of the *Green* procedure.[28] The state courts have jurisdiction concurrent with the federal courts to enforce the seaman's rights under the Jones Act and, consequently, the state court had jurisdiction over Respondent's suit.[29] Respondent's suit would have been removable "as a case arising under a law of the United States, except for the provisions against removal contained in 28 U.S.C. § 1445.[30] The non-removal provision does not limit jurisdiction but confers "a personal privilege" on the claimant.[31]

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27. *See New York and Wilmington Steamship Company v. Mount*, 103 U.S. 239, 26 L.Ed. 351 (1880); *Odegard*, at 451-452.

28. The Court of Appeals did not address this issue, finding that the remand order was not subject to review. The district court, however, remanded the case because it had previously dismissed Petitioner's limitation petition as untimely, a reason not specified in § 1447(c), and never stated that the court was "without jurisdiction"; the remand order, therefore, was subject to review by the Fifth Circuit on Petition for Writ of Mandamus, *Thermtron Productions, Inc. v. Hermansdorfer*, 423 U.S. 336, 346, 96 S. Ct. 584, 590, 46 L.Ed.2d 542 (1976). *In re Romulus Community Schools*, 729 F.2d 431, 435 (6th Cir. 1984); *In re Carter*, 618 F.2d 1093 (5th Cir. 1980), *cert. denied*, 450 U.S. 949, 101 S. Ct. 1410, 67 L.Ed.2d 378 (1981). The denial of the writ of mandamus is now subject to review by writ of certiorari. *See Schlagenhauf v. Holder*, 379 U.S. 104, 85 S. Ct. 234, 13 L.Ed.2d 152 (1964).

29. *Engel v. Davenport*, 271 U.S. 33, 37, 46 S. Ct. 410, 412, 70 L.Ed. 813 (1926).

30. *Great Northern Railway Co. v. Alexander*, 246 U.S. 276, 38 S. Ct. 237, 239, 62 L.Ed. 713 (1918); *Lirette v. N.L. Sperry Sun, Inc.*, 820 F.2d 116 (5th Cir. 1987).

31. *Carpenter v. Baltimore & O.R. Co.*, 109 F.2d 375, 379 (6th Cir. 1940).

Thus, despite the fact that the case arises under a law of the United States, it could not be removed.[32]

Petitioner then filed answer in state court asserting its right to limitation of liability. Until Respondent traversed Petitioner's right to limit, there was no conflict between the Jones Act and the limitation statutes. When Respondent traversed Petitioner's right to limit, however, a conflict arose because on the one hand Jones Act claims generally are not removable, while on the other hand, a determination of the owner's right to limit is left solely to the admiralty court. This precise conflict has not been resolved. This court has resolved the conflict between a seaman's statutory right to bring a Jones Act claim in state court and the exclusivity of the federal court's limitation jurisdiction in favor of maintaining the owner's limitation rights and held that the Jones Act did not repeal the vessel owner's right to limitation.[33] If the same analysis is applied herein it is clear that the Jones Act non-removal provision must yield when the need arises to adjudicate the limitation issue. This is logical because it allows for a determination of the seaman's Jones Act rights as well as the vessel owner's limitation rights, whereas a contrary construction would result in the loss of the rights afforded by the limitation statutes. By denying removal the court of appeals has effectively done judicially under the Jones Act precisely what this Court held Congress had not done when it passed the Jones Act. If Congress did not repeal the limitation of liability statutes when it passed the Jones Act, this

32. *Great Northern*, 38 S. Ct. at 239.

33. *In re East River Towing Co.*, 266 U.S. 355, 45 S. Ct. 114, 69 L.Ed. 324 (1924). *See In re Eastern Trans. Co.*, 37 F.2d 355, 363 (D. Md. 1929), *affirmed*, 51 F.2d 494 (4th Cir. 1931).

court should adhere to its decision not to repeal them by judicial decree.

Thus, in contrast to the Fifth Circuit's conclusion, two means exist for maintaining the status quo—the right recognized in *Sandanger* and the procedure established in the *Green* cases. Under both methods when a vessel owner files an answer in a state court proceeding asserting its right to limitation of liability, the plaintiff must either contest it or admit the right to limit at the value stated by the owner (or the value as agreed to by the parties). If the plaintiff contests the right to limit liability, a claim involving exclusive federal jurisdiction is raised and the vessel owner, for the first time, can take the action to federal court for resolution. The owner can then remove the case within thirty days, 28 U.S.C. § 1445 (b), or file a § 184 petition for limitation of liability in federal court in a time frame governed by laches. Upon the owner's timely action, under either procedure, the plaintiff has the option to try all issues in federal court or to make an appropriate protective stipulation which would allow for return of the action to state court for trial.[34] Thus, neither procedure would infringe upon the

34. There is a conflict of authority as to what constitutes an appropriate protective stipulation. Under the traditional view the action will remain in federal court unless the Plaintiff admits the owners right to limit—that the owners liability will not exceed the value of the vessel and the freight then pending. *Ex Parte Green*, 286 U.S. at 439-440, 52 S. Ct. at 603; *W. E. Hedger Transportation Corp. v. Gallotta*, 145 F.2d 870 (2d Cir. 1944); *The Helen L*, 109 F.2d 884 (9th Cir. 1940); *The Pelham*, 69 F.Supp. 586 (S.D.N.Y. 1946); *The Vera III*, 24 F.Supp. 421 (E.D.N.Y. 1938); *The Kearny*, 3 F.Supp. 718 (E.D.N.Y. 1933); *The Norco*, 1 F.Supp. 932 (W.D. Wash. 1932). However, a line of cases originating with *In re Red Star Barge Line*, 160 F.2d 436 (2d Cir. *cert. denied*, 331 U.S. 850, 67 S. Ct. 1741, 91 L.Ed. 1859 (1947)), hold that the admiralty court should allow the plaintiff to proceed in state court if he stipulates: (1) that the determination of the owner's right to limitation of liability be specifically reserved for the admiralty court, and (2)

seaman's substantive rights under the Jones Act or General Maritime Law and if the appropriate protective stipulation is tendered these procedures would not even transgress the seaman's right to proceed in state court. These procedures result in a fair and just adjudication of the rights of all the parties—to continue to hold to the contrary produces a manifestly unjust and unfair result—one which all courts, not just admiralty courts, should abhor.

THE FIFTH CIRCUIT'S MODIFIED PROCEDURE IS INFERIOR TO THE PROCEDURE OUTLINED IN THE *GREEN* CASES

The Court of Appeals recognizes that its holding will prove burdensome to vessel owners, and in situations such as the case at hand will deprive vessel owners from seeking limitation of liability. As demonstrated by Respondent's prayer for $700,000.00 for a contusion on the wrist, modern day litigation is such that even the most minor injury may involve a claim in excess of the value of the vessel.[35] As the panel recognizes, a shrimp

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that the claimant waives any right of *res judicata*. *See Newton v. Shipman*, 718 F.2d 959 (9th Cir. 1983); *Helena Marine Service, Inc. v. Sioux City; Great Lakes Dredge & Dock Co. v. Lynch*, 173 F.2d 281 (6th Cir. 1949); *In re Tropigas Carriers, Inc.*, 603 F.Supp. 940 (S.D. Fla. 1985); *In re AMF*, 543 F.Supp. 431 (S.D.N.Y. 1982); *In re Businelle Towing Corp.*, 539 F.Supp. 609 (M.D. La. 1982).

35. *CONDITION OF COMPETITION AFFECTING THE U. S. GULF AND SOUTH ATLANTIC SHRIMP INDUSTRY*, Report of the President on Investigation No. 332-201 under Section 332 of the Tariff Act of 1930, as amended, United States International Trade Commission (August 1985) p. 16 [hereinafter *CONDITION OF COMPETITION*.], places the number of shrimp trawlers in the Gulf of Mexico and South Atlantic at about 14,000. This does not take into account the thousands of other fishing vessels operating in the North Atlantic, on the Pacific coast and in Alaskan waters, the Great Lakes, and in inland waterways, nor does it consider other vessels such as tugs, yachts, service vessels, etc., the great majority of which have values less than Respondent's prayer for damages.

boat owner, (as well as almost all other fishing and small work boat owners) will be forced to file a limitation petition every time a written notice of claim is received, unless the written notice is a federal district court lawsuit.

As compared to the procedure outlined in the *Green* cases, the Court of Appeal's requirement will lead to unnecessary litigation, greatly increased federal court litigation, multiplicity of litigation, economic burden on the vessel owner, exclusion of the right to some owners, and forum shopping. Litigation will be increased because ship owners will be required to file a petition in many instances where otherwise no litigation would materialize. A letter informing the vessel owner a claim may be made is sufficient to constitute "written notice of claim".[36] If the owner recevies a letter stating that an investigation has begun and that a claim may result, the owner will be forced to begin litigation, even if the claimant's subsequent investigation reveals a claim is not warranted. Additionally, 73% of all claims against all fishing vessels across the United States are settled without the necessity of litigation but the average delay between injury and resolution is about one year.[37] Under the Fifth Circuit's mandate litigation will be required if settlement is not consummated within six months, which, as the average delay to resolution indicates, is often impractical because of such facts as an uncertain medical prognosis.

Federal court litigation will be greatly increased because under the *Green* procedure federal court inter-

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36. *In re Allen N. Spooner & Sons, Inc.*, 253 F.2d 584 (2d Cir. 1958), *cert. dismissed*, 358 U.S. 30, 79 S. Ct. 9, 3 L.Ed.2d 48 (1959).

37. Nixon, *Recent Developments in U. S. Commercial Fishing Vessel Safety, Insurance, and Law*, 17 J. Maritime Law and Commerce 359 (1986). [hereinafter *Recent Developments in U. S. Commercial Fishing*].

vention is rarely required, whereas under the Fifth Circuit's mandate federal court litigation will be required every time a notice of claim is received, unless such notice of suit is filed in federal court. As discussed above, federal court litigation will be required in cases where no litigation at all would materialize. More significantly, most of the litigation involving the more than 14,000 shrimp boats in the South Atlantic and Gulf of Mexico[38] is conducted in state courts. Under the *Green* procedure the vast majority of these cases require no federal court action since most cases are settled before trial (before the vessel owner's right to limitation is traversed) and many of the cases which are tried do not involve a contested limitation issue as discovery has proven it either unnecessary or unavailable. In contrast the Fifth Circuit procedure would require federal court involvement in practically all state court cases in order for the vessel owner to preserve its right to limit whether its exercise of the right proves to be warranted or not.

The Court of Appeals' mandate will also lead to multiplicity of litigation. The "written notice of claim" is often a state court lawsuit which could be resolved without federal court involvement in the vast majority of cases under the *Green* procedure. Under the Fifth Circuit's analysis, however, the vessel owner will be forced to file a limitation of liability petition in federal court, resulting in multiple lawsuits and possible duplication of work.

The end result of the Court of Appeals' mandate is that the vessel owner will be unduly burdened in contrast to the intent of Congress.[39] The vessel owner is

38. *CONDITION OF COMPETITION*, at p. 16.

39. *Signal Oil & Gas Company*, at 1173.

required to invite the claimant to a lawsuit when common sense would dictate that if the claim is being handled properly without the necessity of litigation, it should be left to proceed accordingly. Furthermore, the vessel owner will be forced to incur the expense of filing a § 185 action, including the expense of posting security, in a situation where it does not know if the claimant intends to contravene its right to a limited liability or, for that matter, whether the claimant even intends to follow through with a suit.

Furthermore, many owners will be denied the benefit of the statute. To sustain a § 185 petition an owner must post security or transfer its interest in the vessel to a trustee. Many insurance companies have withdrawn from or limited their involvement in the fishing vessel market and the current rise in insurance premiums has caused many shrimp harvestors to forego insurance coverage.[40] Without insurance few owners have the resources to obtain the necessary security, which in many cases require cash deposits equal to the value of the bond as collateral. The alternative, transferring the vessel to a trustee for the entirety of the litigation, would put the owner out of business. Thus, many owners will be denied the benefit of the statute or alternatively their livelihood.

Finally, in contrast to sound practice, holding that a vessel owner cannot preserve limitation by answer in state court will allow claimants to defeat the owner's right by their choice of forum.[41] For example, if a claimant makes written notice of claim and a § 185 petition

40. *CONDITION OF COMPETITION, supra* note 34, at 34, 248; *Recent Developments in U. S. Commercial Fishing, supra* note 36, at 363.

41. *Murray,* at 154.

is not filed within six months, the owner still has a right to a limited liability if the claimant chooses to file a complaint in federal court. If, however, the claimant files suit in state court six months after written notice of claim, the owner will be unable to assert its right.

CONCLUSION

The Fifth Circuit has modified the procedure for handling a contested issue of limitation of liability arising in a state court suit as established in the *Green* cases and has eliminated the right of vessel owners to preserve their right to limit its liability by answer in state court which right was first recognized by this court more than 60 years ago. This, despite the fact that (1) Congress has never expressed such an intent; (2) adequate statutory provisions do exist to support the procedure adopted by this court in the *Green* cases; and (3) the end result of the opinions of the Fifth Circuit will lead to unnecessary and greatly increased federal court litigation, economic burden on vessel owners, exclusion of the right to some owners, and forum shopping. The question presented herein significantly affects the entire United States maritime industry and specifically impacts owners, operators, builders, employees and insurers of commercial fishing, pleasure, and work vessels. The Fifth Circuit's decision to modify this court's long standing precedent and, in so doing, to adversely affect the entire maritime industry merits review by this court. Consequently, Petitioner prays that a writ of certiorari be granted.

Respectfully submitted,

CHARLES D. KENNEDY

T. MARK BLAKEMORE

KEITH N. UHLES

147 E. Price Road, Suite A
P. O. Box 3509
Brownsville, Texas 78520
(512) 542-4377

Attorneys for Petitioner,
Vatican Shrimp Company, Inc.

Of Counsel:

ROYSTON, RAYZOR, VICKERY & WILLIAMS

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Petition for Writ of Certiorari have been HAND DELIVERED to all parties required to be served, Respondent's attorney, Mr. Barry Benton, 37 W. Elizabeth, Brownsville, Texas 78520 and to the Honorable Ricardo H. Hinojosa, United States Courthouse, 10th Street and Elizabeth Street, Brownsville, Texas 78520 on this the _____ day of September, 1987.

CHARLES D. KENNEDY

APPENDIX A

In the Matter of the Complaint of VATICAN SHRIMP COMPANY, INC., As Owner of the VESSEL VATICAN for Exoneration from or Limitation of Liability,
Petitioner-Appellant,

v.

Gabriel SOLIS,
Respondent-Appellee.

In re VATICAN SHRIMP CO., INC.,
Petitioner.

Gabriel SOLIS,
Plaintiff-Appellee,

v.

VATICAN SHRIMP CO., INC.,
Defendant-Appellant.

Nos. 86-2412, 86-2579, 86-2601.

United States Court of Appeals,
Fifth Circuit.

March 17, 1987.

Shipowner filed petition to limit its liability in Jones Act case that had been filed and was pending in state court. The United States District Court for the Southern District of Texas, Ricardo H. Hinojosa, J., dismissed the petition as untimely. Shipowner then removed state court action to federal district court, and the District Court remanded the action to state court and imposed sanctions

against shipowner. Shipowner appealed dismissal of its petition and imposition of sanctions and filed petition for writ of mandamus regarding remand of action to state court. The Court of Appeals, E. Grady Jolly, Circuit Judge, held that: (1) shipowner's petition to limit its liability, filed more than six months after shipowner received state court complaint, was properly dismissed as untimely; (2) writ of mandamus could not be granted to review order remanding action to state court on grounds that there was no exclusive federal question and action had been improvidently removed; but (3) sanctions should not have been imposed against shipowner for filing of removal petition.

Affirmed in part and reversed in part.

On Petition for Writ of Mandamus to the United States District Court for the Southern District of Texas.

Appeal from the United States District Court for the Southern District of Texas.

Before GARWOOD, JOLLY and HILL, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:

Vatican Shrimp Company, Inc. ("Vatican Shrimp"), the owner of the F/V VATICAN, petitioned a federal district court, under 46 U.S.C. § 185, to limit its liability in a Jones Act case that had been filed and was pending in a Texas state court. The district court dismissed the section 185 petition as untimely, and Vatican Shrimp then removed the case to federal court. The district court remanded the case to state court and imposed Rule 11 sanctions against Vatican Shrimp on grounds that the

court had already decided the limitation of liability issue upon which it based removal. We hold that the district court properly dismissed the section 185 petition and that the order of remand is not subject to our review. Finally, the district court erred in sanctioning Vatican Shrimp, and we reverse on that issue.

I

The appellee, Gabriel Solis, was a crew member on the F/V VATICAN when, in April 1983, an anchor line struck and injured his wrist, later treated for a contusion with no fracture. Approximately sixteen months after the accident, on October 12, 1984, Solis filed a Jones Act claim in Texas state court, alleging negligence and unseaworthiness on the part of the vessel and its owners and seeking $700,000 in damages. In its state court answer, Vatican Shrimp raised the defense of exoneration from or limitation of liability to the value of the F/V VATICAN and its pending freight, which Vatican Shrimp assessed at $200,331.83. On April 17, 1986, one and one-half years after the suit was filed, Vatican Shrimp petitioned the federal district court for limitation of liability under 46 U.S.C. § 185[1] and for

1. 46 U.S.C. § 185 provides:

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved

restraint of the state court trial. The district court temporarily restrained the state court proceedings, but it later dismissed Vatican Shrimp's section 185 petition as untimely. Vatican Shrimp appealed.

On May 15, 1986, Vatican Shrimp removed the case from state to federal court under 28 U.S.C. § 1441. Because it had previously ruled that Vatican Shrimp could not limit its liability in the federal courts, the district court, on the plaintiff's motion, entered an order remanding the case to state court. In the same order, the district court sanctioned Vatican Shrimp under Fed. R. Civ. P. 11, for $750 in attorney's fees. Vatican Shrimp then filed a petition for writ of mandamus challenging the order of remand and also appealed the Rule 11 sanctions.

Vatican Shrimp's appeal of the dismissal of its section 185 petition, its petition for writ of mandamus regarding the district court's remand of the case to state court, and its challenge to the district court's imposition of the Rule 11 sanctions have been consolidated for the purposes of this appeal.

II

This court has not previously addressed the first question that Vatican Shrimp raises; that is, under what circumstances does a federal court have jurisdiction to adjudicate a contested claim for limitation of liability when the shipowner has pled limitation defensively in

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security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease.

a properly filed state court answer. To date, this question has only been addressed by the Sixth Circuit which held that defensive pleading in a state court answer alone was not an adequate procedural method for attaining federal adjudication of the limitation claim. In the Sixth Circuit, a shipowner, who faces litigation in state court, "acts at his peril" if he does not file a petition for limitation in a federal court under 46 U.S.C. § 185 within six months of receiving written notice of the claim. *Cincinnati Gas & Elec. Co. v. Abel,* 533 F.2d 1001, 1005 (6th Cir. 1976).

We hold that on the facts of the case now before us, Vatican Shrimp's section 185 petition was untimely, and Vatican Shrimp's defensive pleading in the state court answer did not provide the federal court with jurisdiction to hear the shipowner's limitation claim.

A.

In reaching our holding, in addition to the case law, we have reviewed the background of the Limitation of Liability Act of 1851, 46 U.S.C. §§ 181-96 (1982) (amended 1936) ("the Act"). Congress passed the Act in 1851 in an effort to provide American shipowners with benefits equal to those of their foreign competitors. The Act was primarily patterned after the English limitation act, 26 Geo. 3 ch. 86 (1786). Under the Act, a vessel owner, American or foreign, can restrict its liability, resulting from any occurrence for which the vessel is liable, to the value of the vessel and its pending cargo. *See* Volk and Cobbs, *Limitation of Liability,* 51 Tul. L. Rev. 953 (1977) [hereinafter cited as Volk & Cobbs]; *see also* G. Gilmore & C. Black, *The Law of Admiralty* §§ 10-1 to -3 (1975) [hereinafter cited as Gilmore & Black].

The Act provides shipowners with two procedural methods for limiting their liability. *Signal Oil & Gas Co. v. Barge W-701*, 654 F.2d 1164, 1172 (5th Cir. 1981). Under 46 U.S.C. § 185, a shipowner may file a limitation petition in federal district court. Congress amended this section in 1936 by adding a time bar that requires a vessel owner to file its petition in federal court within six months of receiving "written notice of claim."

The second method has its source in 46 U.S.C. § 183,[2] which, unlike section 185, imposes no time bar. Section 183, which has remained virtually unchanged since its enactment in 1851, sets forth generally the Act's substantive provisions that permit a vessel owner, in the absence of privity or knowledge, to limit liability to the owner's interest in the vessel and its pending freight. A shipowner can "set up [limitation] as a defense" by pleading the general substantive provisions of section 183 in an answer filed in any court, including a state court. *Langnes v. Green*, 282 U.S. 531, 543, 51 S. Ct. 243, 247-48, 75 L.Ed.2d 520 (1931). However, once the shipowner's right to limit liability is contested, only a federal court may exercise jurisdiction of the matter because the cause becomes cognizable only in admiralty. *Id.*

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2. 46 U.S.C. § 183 provides:

Amount of liability: loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

In the "Green Cases," decided before the six-month filing period was added to section 185, the Supreme Court established the proper procedure that a shipowner should follow to limit liability in a single claimant case that is originally filed in state court. *Id.; Ex Parte Green,* 286 U.S. 437, 52 S. Ct. 602, 76 L.Ed.2d 1212 (1932). In *Langnes v. Green,* a crew member sued the vessel owner in state court to recover for personal injuries. The parties stipulated to the value of the vessel, and the vessel owner's right to limit liability was not contested. Nevertheless, two days before the state trial was scheduled to begin, the vessel owner petitioned a federal district court to limit his liability under section 185. The district court enjoined the state court proceedings and tried the case on the merits. The Supreme Court, addressing the issue of the crew member's right to pursue a common law remedy in state court, ordered the district court to remand the case, holding that under the saving to suitors clause, 28 U.S.C. § 1333(1), the state court had jurisdiction to decide the crew member's claim. The Court made it clear, however, that if a vessel owner's right to limit liability were contested (which it had not been), a federal court would have "exclusive cognizance of such a question." *Langnes,* 282 U.S. at 543, 51 S. Ct. at 248. As a precautionary measure, the Court instructed the district court to retain the section 185 petition in the event that limited liability should become a contested issue in the state court action. *Id.* at 541-43, 51 S. Ct. at 247-48.

Following remand to the state court, the crew member did, in fact, challenge the vessel owner's right to limit liability. *Ex Parte Green,* 286 U.S. at 440, 52 S. Ct. at 603. The district court once again granted the vessel

owner's motion to restrain the state court proceedings. On appeal, the Supreme Court held that because the owner's right to limited liability had been put into issue, "the cause became cognizable only in admiralty," and the district court, having retained the vessel owner's section 185 petition, was "authorized to resume jurisdiction and dispose of the whole case." *Id.*

B.

We apply the procedure prescribed in *Langnes* but modify it to reflect the 1936 amendment to section 185.[3] That is, we recognize that shipowners may choose to set up the defense of limitation of liability under either method: by pleading the substantive provisions of section 183 in a properly filed answer in any court, or by filing a section 185 petition in a federal district court. However, if a shipowner is sued in state court, the owner's failure to file a section 185 petition in a federal district court within six months after receiving written notice of the claim will result in forfeiture of the right to limit liability should the claimant contest the limitation defense.[4] This

3. Supplemental Rule F for Certain Admiralty and Maritime Claims also incorporates the 1936 amendment and "make[s] it clear that the complaint may be filed at any time not later than six months after a claim has been lodged with the owner." Supp. R. Admir. & Maritime F, advisory committee's notes.

4. A shipowner who files a section 185 petition must also post a bond with the court in the amount of the shipowner's interest in the vessel and its pending freight, or transfer his interest in the vessel and its freight to a court-appointed trustee. 46 U.S.C. § 185 (1982); Supp. R. Admir. & Maritime F(1)(a),(b). We realize that these requirements will prove burdensome to a shipowner who must file a section 185 petition before the claimant has even filed suit. Nonetheless, absent proper removal of the case to federal court, defensive pleading in a state court answer cannot provide a district court with jurisdiction to hear the claim. As Gilmore and Black have noted:

is so because solely filing in the state court an answer in which limitation is pled obviously does not provide a federal court with jurisdiction to act. In contrast, defensive pleading under section 183 in a federal district court answer does not present the same jurisdictional problems. The district court, having jurisdiction to hear the entire case initially filed with it, can adjudicate and rule on a limited liability issue that is raised in a properly filed answer.

In sum, once written notice of a claim is received, unless that notice is a complaint filed in federal court, the prudent shipowner would file a timely section 185 petition in district court and move to stay the federal proceedings on the limitation petition until such time as limited liability is contested. This practice will ensure that a federal court may exercise its exclusive jurisdiction to hear the limitation issue even if the claimant eventually files suit in a state court and contests limitation more than six months after giving written notice of the claim.

C.

Applying the modified *Langnes* procedure to the facts in this case, we have determined that Vatican Shrimp had notice of the claim at the very latest upon the service of the state court complaint in October 1984, thus commencing the six-month time period in section 185, which

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To save himself the expense of filing a limitation complaint and posting security, a shipowner might be tempted to wait until some claimant has instituted an action and then plead the Limitation Act in his answer. However, if he is competently advised, he will always proceed by filing a § 185 complaint except in a single claim situation where he is sure the single claimant will bring his action in federal court.

Gilmore & Black, *supra*, § 10-15 at 858-59.

inarguably begins to run from the shipowner's receipt of written notice of the claim. Vatican Shrimp, however, failed to file its section 185 petition until April 18, 1986, approximately one and one-half years after its receipt of written notice. There is no question that Vatican Shrimp failed to comply with the six-month time limit. Its defensive pleading of limitation in the state court answer did not toll the six-month filing period under section 185; nor did the state court answer provide the federal court with jurisdiction to hear the limitation claim. *See* Volk & Cobbs, *supra* at 976 (assertion of the defense of limitation in a state court suit will not extend the section 185 six-month time period). The district court therefore correctly dismissed the section 185 petition as untimely.

III

On petition for writ of mandamus, Vatican Shrimp argues that the district court abused its discretion in remanding the case to state court. The reason the district court gave for remanding the case was that, in dismissing the section 185 petition, it had previously decided that the federal court could not adjudicate the limitation issue. Vatican Shrimp contends that the prior dismissal does not control the propriety of its petition for removal. It argues, and Solis agrees, that the timeliness of removal is governed by 28 U.S.C. § 1446(b), which provides that a petition for removal must be filed within thirty days of the date on which the case became removable. Both parties contend that the case became removable when limited liability was contested, because such a claim is exclusively cognizable in federal court. Vatican Shrimp claims that Solis first contested limitation on April 15, 1986, when he denied certain admissions of fact regarding

limited liability. The shipowner argues that the petition for removal, filed on May 15, 1986, was therefore timely. Solis counters that the initial complaint, filed on October 12, 1984, was removable because it was clear that Solis sought damages exceeding the value of the vessel and that contested limitation rights were at issue. Under Solis' theory, the case should have been removed within thirty days of the filing of the complaint. We need not reach the parties' arguments.

Remand to the state court is required "[i]f at any time before a final judgment it appears that the case was removed improvidently and without jurisdiction. . . ." 28 U.S.C. § 1447(c). In its memorandum opinion filed with the order of remand, the district court stated, "Defendant's contention that there is an exclusive federal question in this case is unfounded. . . . The court finds that there is no exclusive federal question and that this case was improvidently removed." Based on this statement, it is clear that the district court predicated the remand under 28 U.S.C. § 1447(c). An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise, except in certain civil rights cases. 28 U.S.C. § 1447(d);[5] *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 96 S. Ct. 584, 46 L.Ed.2d 542 (1976); *Spencer v. New Orleans Levee Bd.*, 737 F.2d 435, 438 (5th Cir. 1984). The only vehicle for relief from an order of remand is to petition for a writ of mandamus. *New Orleans Public*

5. Section 1447(d) provides:

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

Service, Inc. v. Majoue, 802 F.2d 166, 167 (5th Cir. 1986). The writ will be granted only if the district court "has affirmatively stated and relied upon a non-1447(c) ground for remand." *Royal v. State Farm Fire & Casualty Co.,* 685 F.2d 124, 126 (5th Cir. 1982); *see also Gravitt v. Southwestern Bell Telephone Co.,* 430 U.S. 723, 97 S. Ct. 1439, 52 L.Ed.2d 1 (1977). The district court stated and relied upon section 1447(c) as its ground for remand, and, accordingly, the writ of mandamus cannot be granted.[6]

IV

Finally, Vatican Shrimp argues that the district court abused its discretion by imposing Rule 11 sanctions for the filing of the removal petition.[7]

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6. The Sixth Circuit in *Cincinnati Gas* stated, without an explanation, that the saving-to-suitors clause, 28 U.S.C. § 1333(1), prohibited removal of the case to federal court. The question whether the saving-to-suitors clause or the nonremovability provision of the Jones Act, 28 U.S.C. § 1445(a), would preclude the removal of a shipowner's suit to limit liability, an exclusively federal claim, was not fully briefed by both parties to the action now before us. Because resolution of the issue is unnecessary to decide this case, we do not address it, but note that the "well-pleaded complaint" rule and the "derivative jurisdiction" doctrine may be relevant to the resolution of this issue. *See Franchise Tax Bd. v. Const. Laborers Vac. Trust,* 463 U.S. 1, 103 S. Ct. 2841, 77 L.Ed.2d 420 (1983) (for purposes of removal under 28 U.S.C. § 1441, federal jurisdiction must be established in the plaintiff's complaint, not in the defendant's answer); *see also id.* at 24 n. 27, 103 S. Ct. at 2854 n. 27 (exclusively federal claim cannot be removed from state court); *Azzopardi v. Ocean Drilling and Exploration Co.,* 742 F.2d 890, 892 n. 2 (5th Cir. 1984) (derivative jurisdiction doctrine would preclude removal of a state action under the Jones Act and the Death on the High Seas Act).

7. Although 28 U.S.C. § 1447(d) precludes our review of the order of remand, it does not shield the subsidiary issue of Rule 11 sanctions from appellate review. Absent review of Rule 11 sanctions in section 1447(c) removal cases, the district courts would have

In its memorandum opinion denying Vatican Shrimp's petition for removal, the district court explained that it had already ruled adversely to the shipowner on the question of limitation of liability. The district court held that "the petition for removal was not warranted by the existing law of this case," and sanctioned Vatican Shrimp under Rule 11[8] for $750 in attorney's fees.

In denying Vatican Shrimp's Motion for Reconsideration of Rule 11 Sanctions, the district court further explained:

> The Petition for Removal, signed by counsel for Defendant, was signed without any apparent grounds for arguing that the petition was "warranted by existing law," the law of the case. Defendant had already exercised his right to challenge the decision

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unlimited authority to impose a wide range of penalties. This is clearly not the intent of either the removal statute or Rule 11. Moreover, our review on the merits of the Rule 11 sanctions is distinct and separable from a review on the merits of the order of remand.

8. Rule 11. Signing of Pleadings, Motions and Other Papers; Sanctions

> . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

> . . . by filing its Notice of Appeal, thus, the removal petition cannot be viewed as a "good faith argument for the . . . reversal of existing law."

We are constrained to disagree. Courts and commentators alike have recognized the uncertainty surrounding the apparent conflict between the removal statute and the "saving to suitors" clause, 28 U.S.C. § 1333(1). *E.g.*, 14 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure: Jurisdiction 2d* § 3674 (1985 & Supp. 1986). When Vatican Shrimp attempted to remove the case from state court, no precedent existed in this circuit to govern the removal of a Jones Act case that involved contested limitation rights and the particular interplay that is presented between 46 U.S.C. §§ 183 and 185. This issue is not simple and, as recognized by the Sixth Circuit, "the question is a close one." *Cincinnati Gas,* 533 F.2d at 1005. In view of the unresolved possibility that removal of the case would be a feasible avenue for attaining federal jurisdiction and considering the stakes involved, counsel for Vatican Shrimp might very well have been derelict not to pursue it. Solis sought $700,000 in damages, three times the assessed value of the vessel and its freight. If Vatican Shrimp's counsel had been successful in their attempts to limit liability, they would have reduced their client's exposure to damages by nearly $500,000. The record reveals that counsel pursued removal in the legitimate interest of the client, and, in the absence of clear precedent, based the removal petition on an argument for the extension of existing law that, on the record presented, was in good faith. Although the district court held that removal was improper in this case, Rule 11 sanctions are not justified merely because counsel were incorrect in their view of the law, particularly in

such a complex and uncertain area. *Robinson v. National Cash Register Co.*, 808 F.2d 1119, 1127 (5th Cir. 1987); *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830 (9th Cir. 1986). Accordingly, we hold that the district court erred in penalizing counsel's attempts to litigate this matter, and we reverse the Rule 11 sanctions.

V

In conclusion, we hold that the district court correctly dismissed as untimely Vatican Shrimp's section 185 petition to limit liability, we deny Vatican Shrimp's petition for writ of mandamus, and we reverse the award of Rule 11 sanctions against Vatican Shrimp. The district court is therefore

AFFIRMED IN PART AND REVERSED IN PART.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Nos. 86-2412, 86-2579, 86-2601

IN THE MATTER OF THE COMPLAINT OF VATICAN SHRIMP COMPANY, INC., As Owner of the Vessel Vatican for Exoneration from or Limitation of Liability,
Petitioner-Appellant,

v.

GABRIEL SOLIS,
Respondent-Appellee.

* * * * *

IN RE: VATICAN SHRIMP CO., INC.,
Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the Southern District of Texas

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GABRIEL SOLIS,
Plaintiff-Appellee,

v.

VATICAN SHRIMP CO., INC.,
Defendant-Appellant.

Appeals from the United States District Court for the Southern District of Texas

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ON SUGGESTION FOR REHEARING EN BANC

(Opinion March 17, 1987, 5th Cir. 1987, ____F.2d____)

(June 23, 1987)

Before GARWOOD, JOLLY, and HILL, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:

In its petition for rehearing en banc, Vatican Shrimp argues that the panel's opinion has effectively "modified out of existence the shipowner's right to raise limitation in state court." Vatican Shrimp claims that because this court has held that a vessel owner may raise the limitation defense in an answer filed in federal court without regard to the six-month time limit in section 185, *Signal Oil and Gas v. Barge W-701,* 654 F.2d 1164, 1173 (5th Cir. 1981), a vessel owner should therefore be able to raise the limitation defense in an answer filed in state court and then litigate the issue in federal court without regard to the six-month time restriction. Vatican Shrimp gives three reasons in support of its argument: (1) the 1936 amendments to the Limitation of Liability Act, 46 U.S.C. §§ 181-96 (1982) ("the Act"), do not indicate that Congress intended to take away the right of the vessel owner to raise limitation in an answer filed more than six months after receipt of notice of the claim; (2) Congress did not amend section 183 to include a time restraint similar to that now present in section 185; and (3) the purpose of adding the six-month time limitation to section 185 was to require the shipowner to act promptly, which is not contravened when limitation is pleaded in an answer to the plaintiff's complaint. As a policy matter, Vatican Shrimp emphasizes that a severe economic burden will be placed on fishing boat owners and small workboat owners

who will be forced to incur the expense of filing federal limitation actions in conjunction with their state court claims.

As we noted in our opinion, *Vatican Shrimp Co., Inc. v. Solis,* Nos. 86-2412, 86-2579, 86-2601, slip op. at 2965 n. 4 (5th Cir. Mar. 17, 1987), we are not insensitive to the economic burdens that will be placed on small-vessel owners. Notwithstanding our concern over these added economic burdens, we are unable to reach a different legal conclusion without violating the precedent of many years that control us. First, we are unable to find any precedent holding that state courts have jurisdiction to adjudicate a contested limitation-of-liability defense; nor does any authority indicate that state courts ever had such jurisdiction; nor is there any authority that the 1936 amendments granted such jurisdiction to state courts; nor have any courts since the 1936 amendments suggested that state courts do have such jurisdiction. Moreover, the United States Supreme Court has expressly held in the *Green* cases, *Langnes v. Green,* 282 U.S. 531 (1931); *Ex Parte Green,* 286 U.S. 437 (1932), albeit decided before the 1936 amendments to the Act, that once the vessel owner's right to limit liability is contested, the cause becomes exclusively cognizable in a federal court of admiralty.

Finally, apart from a section 185 petition or proper removal from the state court to the federal district court, there exists *no* mechanism for getting the matter before a federal court. In this case, it is clear that a section 185 petition was of no avail to Vatican Shrimp because the vessel owner failed to comply with the six-month time limitation. Also, the district court held that removal was

improper and remanded the case to state court. The order of remand is nonreviewable on appeal, 28 U.S.C. § 1447 (d), which leaves Vatican Shrimp with no possible avenue for reaching federal court.

We are mindful that prior to the 1936 amendments, a vessel owner could delay filing a section 185 petition in federal court until the eve of the state court trial. In response to the problems this practice caused, particularly in complex multiple-claimant litigation such as that arising from the MORRO CASTLE disaster, Congress amended the Act in 1936 by adding a six-month time limitation to section 185 that forced the vessel owner to act more promptly. *See* G. Gilmore and C. Black, *The Law of Admiralty,* § 10-14 & n. 57 (1975). Since the passage of the 1936 MORRO CASTLE amendments, Congress has not changed section 185 to provide that the six-month time limitation is tolled by pleading limitation as a defense in a state court answer. We are not a legislature and are therefore powerless to add such a provision to the statute; nor can we interpret the unambiguous language of sections 185 or 183 to contemplate such a tolling of the six-month time period. Despite the serious consequences to small vessel owners, this may simply be an unfortunate result that has slipped through the statutory cracks.

The only way that we could provide a remedy to the petitioner would be either to bend the removal rules or to overrule United States Supreme Court precedent holding that a contested issue of limited liability is subject to the exclusive jurisdiction of the federal admiralty courts. This panel lacks the sanguinity to do so, and, treating the suggestion for rehearing en banc as a petition

for panel rehearing, the petition for panel rehearing is DENIED.

No member of the panel nor judge in regular active service of this court having requested that the court be polled on rehearing en banc (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for rehearing en banc is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NUMBER B-86-081

IN THE MATTER OF THE COMPLAINT OF VATICAN SHRIMP CO. INC., AS OWNER OF THE VESSEL VATICAN FOR EXONERATION FROM OR LIMITATION OF LIABILITY

(Filed May 6, 1986)

ORDER

After considering the pleadings on file, the Court is of the opinion, in accordance with the Memorandum filed by the Court on this day, that this action should be dismissed. It is, therefore,

ORDERED, ADJUDGED and DECREED that the above-entitled and numbered action is DISMISSED. Costs shall be assessed against Petitioner.

The Clerk shall send a copy of this Order to counsel for the parties.

DONE this 6th day of May, 1986, at Brownsville, Texas.

/s/ RICARDO H. HINOJOSA
Ricardo H. Hinojosa
UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NUMBER B-86-081

IN THE MATTER OF THE COMPLAINT OF VATICAN SHRIMP CO. INC., AS OWNER OF THE VESSEL VATICAN FOR EXONERATION FROM OR LIMITATION OF LIABILITY

(Filed May 6, 1986)

T. Mark Blakemore of Brownsville, Texas, for Petitioner, Vatican Shrimp Co., Inc.

Barry R. Benton of Brownsville, Texas, for Respondent, Gabriel Solis.

MEMORANDUM

On the 29th day of April, 1986, came on to be considered the Complaint and Petition of Vatican Shrimp Co., Inc. Petitioner filed this action, pursuant to 46 U.S.C. § 185 to limit its liability in Civil Action No. 84-2507-C in the 197th Judicial District Court of Cameron County, Texas, to the value of the F/V VATICAN and its cargo. The Complaint in this Court was filed well after the six-month period after notice of claim specified in 46 U.S.C. § 185. The Court after having considered the pleadings and briefs on file and the arguments of counsel is of the opinion that Petitioner's Complaint was not timely filed and should thus be dismissed.

The Petitioner asserts that it adequately preserved its right to limitation of liability by raising it as a defense

in its answer in the state court proceeding within the six-month time limit.

The Court finds that the case authority on point states that in order to invoke the protection provided by 46 U.S.C. § 185, the statute must be invoked in the federal court, within six months of the owner's receipt of written notification of the claim. Petitioner has cited several cases which stand for the proposition that raising the defense in the answer is sufficient to invoke the statute's protection. However, the cases Petitioner cites, are limited to those instances where federal jurisdiction has already been established by the underlying proceeding, or were decided before 46 U.S.C. § 185 was amended in 1936 to establish the time limitations.

The Court finds a more analagous factual situation in a recent case from the Sixth Circuit Court of Appeals. In *Cincinnati Gas & Electric Co. v. Abel,* 533 F.2d 1001 (6th Cir. 1976) *cert. den'd,* 429 U.S. 858 (1976), the Court of Appeals held that raising the defense of limitation of liability in an answer in a state court proceeding was insufficient to toll the six-month statutory limitation in 46 U.S.C. § 185. The time limit in § 185 was similarly strictly applied in *Complaint of United States Lines, Inc.*, 616 F. Supp. 315 (S.D. N.Y. 1985) and *Complaint of Hurlen Const. Co.*, 551 F. Supp. 856 (W.D. Wash. 1982).

Based upon the clear language of the statute and the above-cited authority, this Court finds that this action should be dismissed as untimely.

The Clerk shall send a copy of this Memorandum to counsel for the parties.

DONE this 6th day of May, 1986, at Brownsville, Texas.

/s/ RICARDO H. HINOJOSA
Ricardo H. Hinojosa
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NUMBER B-86-105

GABRIEL SOLIS

v.

VATICAN SHRIMP CO., INC.

(Filed July 14, 1986)

ORDER OF REMAND

In accordance with the Memorandum of even date, it is hereby

ORDERED that this case is REMANDED to the 197th Judicial District Court of Cameron County, Texas, as Civil Action Number 84-2507-C.

It is further ORDERED that Defendant shall pay Seven Hundred Fifty Dollars ($750.00) attorney's fees to the Plaintiff within fifteen (15) days of the entry of this Order.

The Clerk shall send a copy of this Order of Remand to counsel for the parties.

DONE this 14th day of July, 1986, at Brownsville, Texas.

/s/ RICARDO H. HINOJOSA
Ricardo H. Hinojosa
UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NUMBER B-86-105

GABRIEL SOLIS

v.

VATICAN SHRIMP CO., INC.

(Filed July 14, 1986)

MEMORANDUM

On the 1st day of July, 1986, came on to be heard Plaintiff's Opposition to Removal of Case to Federal Court which this Court is considering as a Motion to Remand. Defendant Vatican Shrimp Co., Inc., removed this action from the 197th Judicial District Court of Cameron County, Texas, alleging a federal question within the exclusive jurisdiction of this Court. Plaintiff, Gabriel Solis, filed a motion to remand, challenging the existence of a federal question. The Court has considered the pleadings on file, the arguments of counsel, and the relevant case law, and is of the opinion that this case should be remanded.

Defendant seeks to have this Court decide the question of its right to limitation of its liability in this action. This Court has previously decided that Defendant has lost its right to limitation of liability, pursuant to the Limitation of Liability Act, 46 U.S.C. § 181, *et seq.*, for failing to raise the issue in federal court in a timely manner. In Civil Action Number B-86-81, *Solis v. Vatican Shrimp Co., Inc.*, this Court dismissed Defendant Vatican

Shrimp Co., Inc.'s Petition for Limitation of Liability pursuant to 46 U.S.C. § 185 as untimely. (A copy of the Memorandum and Order in Civil Action Number B-86-81 is attached and incorporated herein.) Thus, this Court has already held that this Defendant may no longer seek limitation of liability.

Defendant's contention that there is an exclusive federal question in this case is unfounded in light of this Court's decision in B-86-81. The Court finds that there is no exclusive federal question and that this case was improvidently removed.

Plaintiff seeks sanctions in the form of its attorneys fees incurred as a result of the unfounded removal. The Court finds that, pursuant to Rule 11 of the Federal Rules of Civil Procedure, Plaintiff should be entitled to recover those fees. Rule 11 provides that "[t]he signature of an attorney or party constitutes a certificate by him that he has read the pleading . . . ; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law. . . ." The Court finds that the petition for removal was not warranted by the existing law of this case. The Court further finds that an amount of Seven Hundred Fifty Dollars ($750.00) represents a reasonable attorney's fee for the Plaintiff.

The Clerk shall send a copy of this Memorandum to counsel for the parties.

DONE this 14th day of July, 1986, at Brownsville, Texas.

/s/ RICARDO H. HINOJOSA
Ricardo H. Hinojosa
UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION NUMBER B-86-105

GABRIEL SOLIS

v.

VATICAN SHRIMP COMPANY, INC.

(Filed July 26, 1986)

ORDER

On this day came on to be considered Motion for Reconsideration of Rule 11 Sanctions of Defendant Vatican Shrimp Company, Inc. (hereinafter "Defendant"). Defendant challenges this Court's Order, imposing sanctions, in the form of attorney's fees, pursuant to Rule 11 of the Federal Rules of Civil Procedure entered on July 14, 1986, which remanded this case to the 197th Judicial District Court of Cameron County, Texas. This Court has considered Defendant's arguments and is of the opinion that sanctions were properly imposed and the Motion should be denied.

This Court has now been confronted with the question of Defendant's right to limit its liability twice. Defendant initially filed a Petition for Exoneration From or Limitation of Liability in this Court on April 18, 1986 in Civil Action Number B-86-081. In that case, this Court considered Defendant's Petition pursuant to the Limitation of Liability Act, 46 U.S.C. § 181, *et seq.*, and found that the Petition was not filed within the six (6) month

time limit prescribed at 46 U.S.C. § 185. Defendant argued that it had raised the issue of its right to limit its liability in state court Civil Action Number 84-2507-C. However, the question was not brought to federal court until well past the 6 month time limit. Because the Petition was not timely filed, this Court found that Defendant had effectively waived its right to seek limitation of its liability in the federal courts. Defendant has filed a Notice of Appeal on said ruling.

In the present action Defendant removed the same case, Civil Action Number 84-2507-C, from the Cameron County, Texas District Court. On Plaintiff Gabriel Solis' Opposition to Removal, which this Court considered as a Motion to Remand, this Court found that there was no question over which this Court had exclusive federal jurisdiction since the question of limitation of liability had been explicitly decided in Civil Action Number B-86-081, with the dismissal of Defendant's Petition for Exoneration From or Limitation of Liability.

In remanding the present action to the state court, this Court imposed sanctions against the Defendant for removing the action when the only possible grounds for removal, the federal question concerning Defendant's right to limitation of liability, had been decided, conclusively, in Civil Action Number B-86-081.

Pursuant to Rule 11, FED. R. CIV. P., the signature of an attorney "constitutes a certificate by him . . . , that . . . it [the pleading] is . . . warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose. . . ." The Petition for Removal, signed by counsel for Defendant, was signed with-

out any apparent grounds for arguing that the Petition was "warranted by existing law," the law of the case. Defendant had already exercised his right to challenge the decision in B-86-081 by filing its Notice of Appeal, thus, the removal petition cannot be viewed as a "good faith argument for the . . . reversal of existing law."

The Court found that the Petition for Removal failed to meet the requirements as set out in Rule 11 and so imposed those sanctions prescribed by Rule 11. This Court continues to be of the opinion that Defendant's Petition for Removal violated Rule 11 and that sanctions, in the form of attorney's fees, and costs should be imposed.

Therefore, it is ORDERED that Defendant's Motion for Reconsideration is hereby DENIED. The Court's Order of July 14, 1986, imposing sanctions of $750.00, remains in full effect.

The Clerk shall send a copy of this Order to counsel for the parties.

DONE this 26th day of July, 1986, at Brownsville, Texas.

/s/ RICARDO H. HINOJOSA
Ricardo H. Hinojosa
UNITED STATES DISTRICT
JUDGE

APPENDIX B

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1441 (1986).

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal

the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

28 U.S.C. § 1445 (a) (1986).

A civil action in any State court against a railroad or its receivers or trustees, arising under sections 51-60 of Title 45, may not be removed to any district court of the United States.

28 U.S.C. § 1446 (1986).

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) The petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days

after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c)(1) A petition for removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the petitioner leave to file the petition at a later time.

(2) A petition for removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the petition shall constitute a waiver of such grounds, and a second petition may be filed only on grounds not existing at the time of the original petition. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a petition for removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the petition is first denied.

(4) The United States district court to which such petition is directed shall examine the petition promptly. If it clearly appears on the face of the petition and any exhibits annexed thereto that the petition for removal should not be granted, the court shall make an order for its summary dismissal.

(5) If the United States district court does not order the summary dismissal of such petition, it shall order an

evidentiary hearing to be held promptly and after such hearing shall make such disposition of the petition as justice shall require. If the United States district court determines that such petition shall be granted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or de-defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(e) Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(f) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

28 U.S.C. § 1447 (1986).

(a) In any case removed from a State court, the district court may issue all necessary orders and process

to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the petitioner to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed, pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

46 U.S.C. § 183 (1986).

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $420 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $420 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: *Provided,* That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term

"seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title.

46 U.S.C. § 184 (1986).

Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

46 U.S.C. § 185 (1986).

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or

approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease.